IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02..03..2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.A.Nos. 897 and 898 of 2004
and
W.A.M.P.Nos. 1645, 1646, 7017 and 7018 of 2004

The Special Officer,
Vellore Co-operative Sugar Mills,
Ammundy Post,
Vellore - 632 519,
VELLORE. ..Appellant in both the W.As.
Petitioner in both Wps.

Vs.

1.The Presiding Officer,
Labour Court,
Vellore. ..1st respondent in both the W.As.

2. K.Shanmugam ..2nd respondent in W.A.897/2004.

3. D.Krishnan ..2nd respondent in W.A.898/2004.
(Respondents in - do -)

PRAYER: Writ Appeals filed against the common order of the learned single Judge dated 08.12.2003, passed in W.P.Nos.32374 and 32375 of 2002, as stated therein.

For Appellant :: Ms.G.Thilagavathy

For Respondent - 2 :: Mr.Anbhazhagan for
in both the W.As. Ms. D. Geetha

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J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

These writ appeals have been filed against the impugned order of the learned single Judge dated 08.12.2003 in dismissing W.P.Nos. 32374 and 32375 of 2002.

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2. Heard learned counsel for the parties and perused the record.

3. The second respondent in both the writ petitions were workmen of the writ petitioner-Mill who filed applications under Section 33-C(2) of the Industrial Disputes Act before the Labour Court, Vellore. The 2nd respondent in W.P.No.32375 of 2002 viz., D.Krishnan in his application stated that he was working in the writ petitioner -Mill from 19.02.1979, and he was promoted as Time Keeper during the year 1982. He was deputed to work as Manager of the Canteen from 10.02.1996. He alleged that he used to work normally from 6 am to 6 pm, and he worked overtime for 1298 ½ hours between 15.02.1996 to 31.05.1997 as detailed in the annexure to his application. He has relied on the punching cards available with the management to prove his claim. It was alleged in his application that he made several representations to the management claiming overtime allowance, but since they were not heeded to he was compelled to filed an application under Section 33-C(2) of the Industrial Disputes Act, with an additional prayer to condone the delay in the filing the said application.

4. Similarly, the second respondent in W.P.No.32374 of 2002 viz., K.Shanmugam in his claim petition stated that he was working in the writ petitioner-Mill from 04.04.1977, and he was appointed as Clerk-cum-Typist on 14.11.1980, and re-designated as Junior Clerk in the month of June, 1988. Thereafter, he was transferred and made in charge Manager of the Employees' Canteen. He stated in his claim petition that he used to work normally from 4 am to 4 pm, and he worked overtime for 10,374 hours between 05.09.1991 to 10.12.1995 as detailed in his annexure to the claim petition. He also relied on the punch cards available with the management in respect of his claim.

5. A written statement was filed by the management in reply to those claim petitions. The writ petitioner-Mill denied and repudiated the claim of overtime allowance and alleged that the concerned employees were never asked to do overtime work. It was alleged that the petitioners in the claim petition were managers of the Mill and not workmen. In paragraph - 6 of the written statement the claim of the employees were denied and it was alleged that they were never ordered to work overtime. It was alleged in paragraph - 13 of the written statement that mere production of punch cards does not establish the right to any overtime allowance. The punch cards would only show at what time an employee entered the gate of the factory and at what time he left. There can be various reasons as to why an employee stays inside the factory compound. Unless there is a specific direction from the factory manager or any other authorised person to do overtime work, the employees cannot claim overtime allowance, and they cannot claim overtime allowance merely because they were

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inside the factory beyond the working hours. More over, the claim made after a long lapse of time, without an iota of evidence, cannot be sustained at all.

6. By its order dated 24.05.2002 the Labour Court allowed the claim petitions of both the employees. It held that the petitioner in Claim Petition No.141 of 1999, viz., D.Krishnan was entitled to a sum of Rs.38,331/- and the petitioner in claim petition No.147 of 1999, viz., K.Shanmugam was entitled to Rs.1,10,000/- as overtime allowance, which the respondent-management has to pay within a period of two months, failing which interest at the rate of 6% p.a. will be charged.

7. We have carefully perused the order of the Labour Court dated 24.05.2002. It may be noted that no oral evidence was adduced on behalf of the claimants before the Labour Court and no exhibits were marked. In our opinion, whenever there is a claim for overtime allowance, it is incumbent on the workmen concerned to at least come into the witness box and state on oath before the Labour Court that he/she worked overtime. When he/she does not even adduce his/her own oral evidence it is difficult to accept the claim for overtime allowance. In this case, the claimants/workmen never adduced any oral evidence before the Labour Court. Only claim petitions were filed, and the only material which has been relied upon is the time cards filed by the respondent/management (appellant in the present writ appeals). In our opinion, the time cards only reflect the time of entry of the workman into the factory and time of exit. In our opinion, the punch card by itself cannot substantiate a claim for overtime allowance, as it does not prove that in fact the workman concerned worked overtime. All that the time cards show is the time of entry into the factory and the time of exit. It is quite possible that even after the working hours of the workman concerned, he may be loitering around inside the factory premises without being told to do more work.

8. Even in their claim petition before the Labour Court (which was not even supported by an affidavit) the workmen concerned did not mention who asked them to work overtime. In our opinion, it was incumbent upon the claimant for overtime allowance to mention which officer or supervisor asked him to work overtime, and when and where, but these details have not been given in the present cases. In our opinion, merely mentioning that the claimant worked overtime for a certain number of hours without clearly stating who ordered him to work overtime and without giving other details cannot sustain a claim for overtime allowance.

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9. In the written statement it was the clear case of the respondent-management that the claimants were never asked to work overtime (vide paragraphs-6 and 13 of the written statement filed in reply to the workmen's claim petition before the Labour Court).

10. Against the order of the Labour Court dated 24.05.2002 the management filed writ petitions before the learned single Judge, who has dismissed the petitions stating that there was material on record i.e., punch cards which supported the workmen's claim.

11. We have carefully perused the judgment of the learned single Judge. In paragraph - 11 of his Judgment the learned single Judge observed

> "it is seen that no oral evidence had been let in on the side of the management to establish that the employees did not work during the hours as could be seen from the punch cards".

Thus, the learned single Judge has put the burden of proof on the management. In our opinion, whenever a claim for overtime allowance is made by a workman, the burden of proof lies on the workman to prove by relevant evidence that he was ordered to work overtime and in fact he had worked overtime and was entitled for overtime allowance. The burden of proof is not on the management, vide Rajasthan State Ganganagar Sugar Mills Ltd., Vs. State of Rajasthan and Another, 2004 (8) SCC 161, Municipal Corporation, Faridabad Vs. Siri Niwas, 2004 (8) SCC 195, and M.P.Electricity Board Vs. Hariram, 2004 (8) SCC 246.

12. Section 101 of the Indian Evidence Act, 1872 states:-

> "Whoever desires any Court to give judgment as to any legal right to liability dependent on the existence of facts which he asserts, must prove that those fact exists".

13. Section 102 of the Indian Evidence Act, 1872 states:-

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> "The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side".

14. In view of both the above provisions the burden of proof obviously lies on the workman when he claims overtime

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allowance. In view of Section 101 of the Indian Evidence Act, the workman must prove that he in fact worked overtime. In view of Section 102 of the Indian Evidence Act if no evidence is let in on either side the claim of the workman will be rejected. Thus, it is evident that the learned single Judge was not correct when he put the burden of proof on the management to prove that the workmen concerned did not work overtime. As mentioned above, the workmen concerned never adduced any oral evidence in support of their claim for overtime allowance. In our opinion, it was incumbent on the workmen concerned to at least adduce their own oral evidence and state on oath that they had in fact worked overtime, but they did not do so. They did not even file an affidavit in support of their claim in their claim petitions. Mere reliance on the punch cards, in our opinion, does not prove that in fact they had worked overtime, because, as already stated above, the punch cards would only prove the time of entry into the factory and the time of exit from the factory, but it does not necessarily prove that during that period the workman concerned was in fact working all through on the orders of his superior.

15. There was nothing on record to prove that the manager or any authorised person ordered the workmen concerned to work overtime.

16. The contention of the management that there was no authorisation or permission granted to the workmen concerned to work overtime was in our opinion wrongly rejected by the Labour Court on an erroneous finding that "there is no specific denial as to non-performance of the overtime by the management". This is wholly contrary to the written statement filed by the management before the Labour Court in which there are specific averments in paragraph -4. Thus, in C.P.No.141 of 1999 paragraph - 4 of the written statement states:-

> "The respondent submits that the petitioner was never directed to do any overtime and therefore there was no order issued for payment of any O.T. He also did no do any overtime work. The respondent does not admit the averments made in paras 1 and 2 of the petition".

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Similarly, in C.P.No.147 of 1999 paragraph - 4 of the written statement states:-

> "The respondent submits that the petitioner was never directed to do any overtime and therefore there was no order issued for payment of any O.T. He also did not do any overtime work. The respondent

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does not admit the averments made in paras 1 and 2 of the petition."

17. Thus, the above observation of the Labour Court is contrary to the record. Apart from that, the point whether the claimants are employees or workmen under the Industrial Disputes Act or Managers was also not considered by the Labour court, although the plea was specifically raised by the management before the Labour Court.

18. The learned single Judge has placed reliance on the decision of the Supreme Court in Chief Mining Engineer, M/s. East India Coal Co. Ltd., Bararee Collier, Dhanbad Vs. Rameshwar & Others, AIR 1968 SC 218. In our opinion, the said decision was clearly distinguishable, because there the claim was for bonus available under a Scheme formulated for the benefit of the employees. Thus, there was a pre-existing right of the workmen for bonus in that case. On the other hand, in the present case there was no automatic right to claim overtime unless the workman concerned was ordered or authorised to work overtime under the Factories Act. Under Section – 54 of the Factories Act there is a time restriction for work in the factory, and under Section – 59 extra payment can be made for overtime work. Under Rule 78B of the Tamil Nadu Factories Rules, 1950 the management can authorise an employee to work overtime by granting him an overtime slip, and it is only on the basis of this that a claim for overtime allowance can arise. The management has specifically contended in its written statement that the workmen concerned were never ordered or authorized to work overtime. The workmen concerned have not stated who ordered them to work overtime, when and where he gave this order, and other such details. All these have not been considered by the learned single Judge as well as the Labour Court.

19. The learned counsel for the appellant-management had also submitted that the Labour Court was incompetent to decide the application under Section 33-C (2) of the Industrial Disputes Act since there was no pre-existing right, vide U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Others, AIR 1970 SC 237 and Municipal Corporation of Delhi Vs. Ganesh Razak and Another, 1995 (1) SCC 235. We agree with this submission also. In this connection, it has been held by the Supreme Court in Municipal Corporation of Delhi Vs. Ganesh Razak and Another, 1995 (1) SCC 235 that the right to a benefit which is sought to be computed under Section 33-C(2) must be an existing one, that is to say, one which has already been adjudicated upon or provided for under a statute or settlement. The Supreme Court in the aforesaid decision observed (vide para-13):-

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"In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C (2)".

20. For the reasons given above these writ appeals are allowed and the impugned judgment of the learned single Judge dated 08.12.2003 and the common Award of the Labour Court dated 24.05.2002 are quashed. Consequently, all the connected miscellaneous applications are closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to:-

1.The Presiding Officer,
Labour Court,
Vellore.

+ Two ccs to Ms.D. Geetha, Advocate in Sr 9791, 9792

+ One cc to Ms. G. Thilakavathi, Advocate in SR 9779

Judgment in
W.A.Nos.897 & 898 of 2004
Delivered on: 2..03..2005

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